

FILED

June 23 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0638

FILED

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

ORDER

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOHN RICHARDS,

Defendant and Appellant.

The State of Montana has moved to dismiss this appeal on grounds that the notice of appeal was untimely filed. Appellant John Richards has filed written objections to the motion to dismiss.

The State points out that the District Court entered the judgment from which this appeal is taken on July 7, 2009, but Richards did not file his notice of appeal until November 30, 2009. Richards states he filed his notice of appeal within 10 days after he received a remittitur issued by the Clerk of the District Court on November 19, 2009. He denies ever receiving a July 29, 2009, letter from the District Court's law clerk, a copy of which is appended to the State's motion to dismiss, in which he was advised that, under Rule 4, M. R. App. P., notice of appeal must be filed within 60 days of the date of entry of judgment. However, and notably, Richards does not deny receiving a copy of the July 7 judgment and does not allege that he was unaware of the deadline for filing an appeal.

We conclude Richards' notice of appeal was not timely filed and that he has not established a basis on which he should be allowed to file an out-of-time appeal.

Therefore,

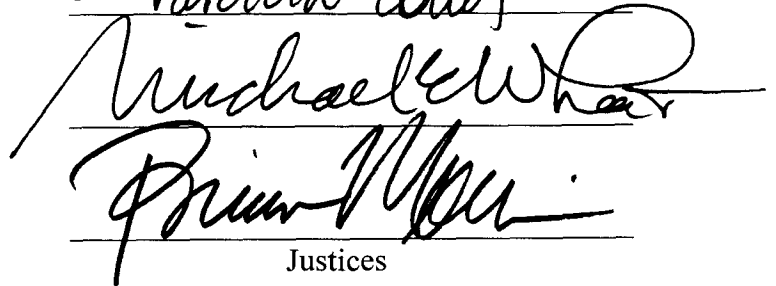
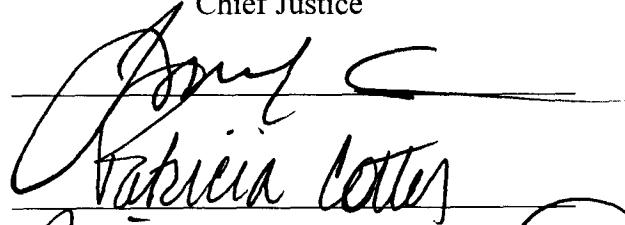
IT IS ORDERED that the State of Montana's motion to dismiss this appeal is GRANTED and this appeal is DISMISSED, with prejudice.

The Clerk is directed to provide copies of this Order to all counsel of record and to John Richards personally.

DATED this 22nd day of June, 2010.



Chief Justice



Justices